IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 1119 of 1997

Between:

1 Sri C. Rama Naidu S/o. C. Chinnabba Naidu @ Gangi Naidu
R/o. Jalakantapuram (village), Kalvakunta (Post), Penumur

(Mandal), Chittoor district.
2 C. Rajendra Naidu S/o. C. Rama Naidu
R/o. Jalakantapuram (village), Kalvakunta (Post), Penumur

(Mandal), Chittoor district.

..... PETITIONERS

AND

1 The Commissioner of Land Revenue,
A.P., Hyderabad.
2 The Joint Collector,
Chittoor.
3 The Mandal Revenue Officer,
Penumur Mandal, Chittoor dist.
4 Sri C. Subrahmanyam Naidu
Matampalli village, Chittoor dist.,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly in the nature of Certiorari calling for the records of the respondents relating to proceedings no. BCW3/667/92, and quash the same to the extent declaring that the petitioners are not eligible for assignment of the land and directing the 2nd respondent to evict the

petitioners from the land in possession of the petitioners in S.No.1288/1 of Kalvagunta village of Penumur Mandal of Chittoor district of an extent of Ac.5.04 cents.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents 1 to 3: GP FOR REVENUE

Counsel for Respondent No.4 : None appeared

The Court made the following ORDER:

Mother of the second petitioner, Smt. Amaravathamma, purchased the land of an extent of Ac.5.04 cents in survey No.1288/1 of Kalvakunta village, Penumur mandal under a registered sale deed dated 26.10.1967 from one Narayanachari, who was the original assignee of the land and since then the petitioners are in peaceful possession and enjoyment of the same. While so, the fourth respondent, having separated himself from the joint family, appears to have made a representation to the then Tahasildar, Chittoor to the effect that his family purchased the said property contrary to the conditions of patta. The then Tahasildar, by order dated 07.10.1980, cancelled the assignment and resumed the land to the Government. Meanwhile, the fourth respondent applied for assignment of the land. Against the proposal of the Government for assignment, the said Amaravathamma filed appeal before the Revenue Divisional Officer, Chittoor, who dismissed the same through his order dated 20.08.1981. Aggrieved by the said orders, the petitioners filed revision before the Joint Collector, Chittoor, who, through order dated 02.02.1983 rejected the same and directed the Tahasildar to allot the same to the persons eligible and consequently the fourth respondent was assigned the said land. Meanwhile, the said Amarvathamma died. Then the petitioners carried the matter in further revision to the first respondent, who, through order dated 27.02.1983 remanded the matter to the Joint Collector for consideration under Section 3(5) of the A.P. Assigned land (Prohibition of Transfers) Act, 1977. The Joint Collector, after conducting a comprehensive enquiry, passed orders on 24.01.1985 rejecting

the claim of the writ petitioners. Aggrieved by the same, the matter was carried to the first respondent, who affirmed the orders of Joint Collector. Challenging the said orders, the petitioners approached the Government and it issued G.O.Ms.No.542 dated 30.05.1992 remanding the matter to the Joint Collector, Chittoor for examination in the light of the orders of the first respondent. Consequently, the Joint Collector passed orders on 10.07.1992 directing the Mandal Revenue Officer, Penumur to resume the land to the Government by cancelling the assignment granted in favour of the fourth respondent and to assign the land to the eligible persons, after taking into account the claim of the petitioners for assignment. The second respondent found that the petitioners possess only an extent of Ac.2.50 cents at Kalvagunta and hence they are eligible to an extent of Ac.2.50 cents of land. The second respondent cancelled the assignment of the land in S.No.1288/1 of an extent of Ac.5.05cents of Kalvugunta village in favour of the fourth respondent and requested the Mandal Revenue Officer to resume the land to the Government. Aggrieved by the same, the fourth respondent filed revision before the first respondent. As per the report of the Tahasildar, Chittoor dated 26.3.1983, the petitioners are in occupation of Ac.0.54 cts. wet land and Ac. 6.11 dry land, Shivaijama cultivation dry Ac.1.76 cts and assigned land of Ac.7.62 total Ac.16.57 cents and if Shivaijama lands are excluded, they are in occupation of Ac.14.81 cents. Hence, the successors of Amaravathamma are not eligible for assignment. In view of the same, the first respondent, through his orders dated 23.08.1996, found that the petitioners are not landless poor persons and directed the Collector, Chittoor to evict the petitioners from the land and to assign the same to the eligible persons. Challenging the legality and validity of the said order, the present writ petition has been filed.

Respondents 1 to 3 filed counter-affidavit stating that the land was originally assigned to one N. Narayana Achari, which was said to have been sold to Smt. Amaravathamma for an amount of Rs.200/-, contrary to the assignment rules and conditions. The first respondent passed orders on 23.08.1996 giving cogent reasons, holding that from the report of the Tahasildar dated 26.03.1983, it is clear that the petitioners are not the landless poor persons. Hence, the respondents contend that the petitioners are not eligible for any assignment of the land.

Learned counsel for the petitioner contends that once the proceedings issued by the Joint Collector dated 24.01.1985 are set aside by the Government in G.O. Ms.No. 542, dated 30.05.1992, any finding recorded therein cannot be relied by the first respondent for coming to the conclusion that the petitioners are not eligible for assignment of the land, in view of the specific finding given by the Joint collector in his proceedings dated 10.07.1992,wherein it was observed that the petitioners are in occupation and enjoyment of the land in question. But the first respondent, without taking into consideration the said finding, made the petitioners ineligible for assignment of the land.

Learned Government Pleader for Revenue, on the other hand sought to sustain the orders of the first respondent.

When the Joint Collector has not given any cogent reasons as to how he arrived at the conclusion that the petitioners had only Ac.2.50 cents of land each when their family was originally having Ac.10.45 cents of land, even as per the report dated 26.03.1983 of the Tahasildar, his finding cannot be taken into consideration. As on the date, when the assignment has to be made in favour of either of the parties, viz. the fourth respondent and the petitioners, the question as to whether they are eligible to be considered for assignment or not has to be seen but not the subsequent events, if any. The finding recorded by the first respondent that the petitioners are not landless poor persons and hence they are not eligible to be considered for assignment of the land alone is set aside and the order passed by the Joint Collector is restored and the authorities have to consider afresh for assignment of land to the eligible landless poor persons, after taking into consideration the claim of the petitioners herein, as on the date when the assignment was made.

The writ petition is accordingly disposed of.

19.11.2004

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To

1 The Commissioner of Land Revenue, A.P., Hyderabad.

2 The Joint Collector, Chittoor.

3 The Mandal Revenue Officer, Penumur Mandal, Chittoor dist.

4 Two CCs. to the Government Pleader for Revenue, High Court of A.P., Hyderabad (OUT).

5 Two CD copies.